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ABSTRACT

An examination of the school laws in the 50 states reveals that 47 have penalties that can result in forced incarceration for young people who do not attend school. In a five-year period, 341 young persons were committed to Maryland juvenile institutions for the crime of truancy. During the same time, 2,699 young people were committed to institutions because they were considered to be "Children in Need of Supervision" (CINS), which includes truants, runaways, and children deemed to be ungovernable. It is reasonable to assume that some of the people who were committed for being runaways and ungovernable have had problems with truancy. Thirty-four percent of all Maryland delinquents committed were in the CINS category. If students were not compelled to attend school, the monetary savings from truant officers and their staffs, vandalism, and incarceration of young people would be more than enough to achieve the American dream of free public education for all of our people. Further, there would be more money for compensatory and specialized educational programs that are often prohibitively expensive with the present law. (Author/RT)

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COMPULSORY SCHOOLING: THE LEGAL ISSUE

by John Splaine

A. Schooling and Education: The Difference

Please note that the title of this article is "Compulsory Schooling" not "Compulsory Education" -- the difference is crucial.

The concern of this article is whether young people should be incarcerated in a juvenile institution for non-attendance in a place which was allegedly developed for them. Should there be laws compelling people to go to school? Should young people be incarcerated if they do not obey the laws? Are there alternatives to the present laws compelling young people to attend school? Should there be laws which make "education" compulsory?

Schooling is a place -- education is a process. It is much harder to attach penalties to a process. Whereas, when young people do not show up in the place (school) in which they are assigned, their absence is a matter for observation and statistical computation. They are either there or they are not.

The two terms, schooling and education, although they are often used interchangeably, mean very different things to different people. Briefly, compulsory schooling means the enforcement of persons into a building or into a locality. Someone is charged with this enforcement and penalties are carried for non-enforcement as well as non-compliance. Compulsory education, on the other hand, denotes that someone is compelled

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to educate or to be educated.

There are penalties attached to the violation of the compulsory schooling laws. If a school official, a parent, or a truant officer does not see to it that a youngster below a certain age obeys the law, then he is subject to punishment as prescribed by law. Conversely, if a child who is subject to the compulsory schooling laws violates those laws without the assistance of an adult, then the child is subject to the penalties as prescribed by law.

Education, on the other hand, is much harder to enforce. Educators are constantly debating the proprieties of measuring whether education is taking place and how the process might be measured. Whether the educators are educating and whether the educatees are being educated is an open question. Consequently, measuring the process of education is much more difficult than measuring attendance in a locality.

B. Incarceration for Violators

An examination of the school laws in the 50 states reveals that 47 of 50 states have penalties for such non-school attendance. In these 47 states such non-compliance with the law can result in some kind of forced incarceration of young people of a certain age. In most states the age of forced schooling is from age 7 to 15 inclusive.

In Table 1 is a listing of the 50 states, the inclusive ages for compulsory school attendance, and the ultimate penalty for non-compliance with the law.

TABLE 1

State	Inclusive Ages For Compulsory Schooling	Final Disposition of Case
Alabama	7-15	Incarceration *
Alaska	7-15	Incarceration
Arizona	8-15	Incarceration
Arkansas	7-15	Incarceration
California	6-15	Incarceration
Colorado	7-15	Incarceration
Connecticut	7-15	Incarceration
Delaware	7-15	Incarceration
Florida	7-15	Incarceration
Georgia	7-15	Incarceration
Hawaii	6-14	Incarceration
Idaho	7-15	Incarceration
Illinois	7-15	Incarceration
Indiana	7-15	Incarceration
Iowa	7-15	Incarceration
Kansas	7-15	Incarceration
Kentucky	7-15	Incarceration
Louisiana	7-15	Incarceration
Maine	7-16	Incarceration
Maryland	6-15	Incarceration
Massachusetts	7-16	Incarceration
Michigan	6-15	Incarceration
Minnesota	6-15	Incarceration
Mississippi	No Requirement	Repealed 1956 legislation
Missouri	7-16	Incarceration
Montana	7-15	Incarceration
Nebraska	7-15	Incarceration
Nevada	7-16	Incarceration
New Hampshire	6-15	Incarceration
New Jersey	6-15	Incarceration
New Mexico	6-16	Incarceration
New York	6-15	1971 legislation repealed previous penalty calling for incarceration
North Carolina	7-15	Incarceration
North Dakota	7-15	Incarceration
Ohio	6-17	Incarceration
Oklahoma	7-17	Incarceration
Oregon	7-17	Incarceration
Pennsylvania	8-16	Incarceration
Rhode Island	7-15	Incarceration
South Carolina	No Compulsory Schooling Law	
South Dakota	7-16	Incarceration
Tennessee	7-15	Incarceration
Texas	7-17	Incarceration
Utah	6-17	Incarceration
Vermont	7-15	Incarceration
Virginia	6-16	Incarceration
Washington	7-15	Incarceration
West Virginia	7-16	Incarceration
Wisconsin	7-15	Incarceration
Wyoming	7-15	Incarceration

* As used here, incarceration means the forced detainment of persons as a result of non-compliance with a law. In the case of young people this means not only detainment in a juvenile prison but to any domicile or institution as ordered by the court.

As evidenced in Table 1, two states, South Carolina and Mississippi, do not have compulsory school attendance laws.[1] One state, New York, does not have ultimate incarceration as a penalty for non-compliance. Forty-seven states have some kind of incarceration as the state's ultimate enforcement. This ranges from detainment in a juvenile "group" home to commitment to a juvenile prison.

There are, however, some exceptions to the compulsory schooling laws. The exceptions contained in the Illinois School Code are generally consistent throughout the states which have compulsory school attendance laws.

> Any child attending a private or a parochial school where children are taught the branches of education taught to children of corresponding age and grade in the public schools, and where the instruction of the child in the branches of education is in the English language;
>
> Any child who is physically or mentally unable to attend school, such disability being certified to the county or district truant officer by a competent physician; or who is excused for temporary absence for cause by the principal or teacher of the school which the child attends;
>
> Any child necessarily and lawfully employed according to the provisions of the law regulating child labor may be excused from attendance at school by the county superintendent of schools or the superintendent of the public shcool which the child should be attending, on certification of the facts by and the recommendation of the school board of tne public school district in which the child resides. In districts having part time continuation schools, children so excused shall attend such schools at least 8 hours each week
>
> Any child over 12 and under 14 years of age while in attendance at confirmation classes.[2]

2/ Office of the Superintendent of Public Instruction, State of Illinois, The School Code of Illinois. (St. Paul, Minnesota: West Publishing Co., 1974), p. 167.

1/ The absence of such laws in these states appears to have more to do with forced de-segregation than with education philosophy.

C. Maryland: A Case

The numbers of young people detained or committed in juvenile institutions each year for the "crime" of non-attendance in schools is astounding. The State of Maryland serves as an example of the enforcement of the compulsory schooling law. The figures for detainment (D) and commitment (C) in the State of Maryland for 1970-1974 do not include detailed statistics for the number of youngsters detained by the Department of Juvenile Services in 1970-1971 (see Table 2).

TABLE 2[3]

Year	Grand Total Delinquent		Number of Truants		Percent Truant of Total		Total CINS*		Percent CINS of Total	
	C	D	C	D	C	D	C	D	C	D
1970	1822		147		8		649		36	
1971	1790		34		2		578		32	
1972	1801	1843	85	25	5	1	760	510	42	28
1973	1439	2807	71	23	5	1	580	641	40	23
1974	1131	4118	4	4	-	-	132	491	12	12
Totals	7983	8768	341	52	4	1	2699	1642	34	19

C = Commitment D = Detainment *Children in Need of Supervision

Some elements of Table 2 are crucial as illustrations. 1) In the five years under study 341 young persons have been committed to Maryland's juvenile institutions for the crime of truancy. Even though this is only 4 percent of the total number of juvenile delinquents committed,

3/ These statistics were obtained from the Division of Special Services, Department of Juvenile Services Annual Reports, 1970-1974. Baltimore, Maryland: Department of Juvenile Services, 1970-1974.

it seems to this writer that the number is 341 too many. 2) Possibly an even more outrageous figure is the 2699 young people who have been committed because they have been considered to be "Children in Need of Supervision." This category includes truants, runaways, and children deemed to be ungovernable. It is reasonable to assume that some of the young people who have been committed for being runaways and/or ungovernable have had problems with truancy. Indeed, their problems may have originated with truancy. 3) Thirty-four percent of all delinquents were committed from 1970-1974 in the CINS category. Many of the other delinquent young people who were categorized alphabetically for being "arsonists" to being "violators of their probation" may also have problems associated with truancy or have had their problems originating with truancy. 4) Another interesting trend indicated in Table 2 is that the figure for CINS commitals in 1974 was reduced. This, perhaps, results largely from the fact that the Maryland Senate passed Bill 1064 in 1973 which prohibited CINS children from being committed to training schools. However, even in 1974, 132 people were committed for CINS violations. Furthermore, it is not clear as to what presently happens to the other CINS violators in Maryland. How many young people who were originally committed for truancy violations or as "Children in Need of Supervision" later became "habitual criminals" during their first stay in public institutions? This question needs further study. Also, it certainly makes for interesting speculation on what our "Compulsory School Attendance Laws" are doing to some young people. It can also be speculated that those youngsters who do not have the problems the CINS young people have would be in school anyway even if violation of compulsory attendance laws were not ultimately penalized by incarceration.

Another frightening possibility is that this case study of the enforcement policies of the State of Maryland is that of one of the more enlightened states.

D. Is There an Alternative?

Are there any alternatives to Compulsory School Attendance Laws is a question to which educators must respond. One alternative answers the criticism of those who say that free public education is one of our most cherished state functions and that we should continue this right. It is proposed here that compulsory education laws remain. The state should be compelled to provide free public education for all people from the "cradle to the grave." However, crucial to this proposal is the belief that people should not be compelled to go to school and that they should not be incarcerated in penal institutions if they do not attend. As illustrated, 47 of our states presently incarcerate people for not taking advantage of what is rightfully theirs.

The monetary savings from budgeting for truant officers and their staff, the savings from school vandalism[4] and the savings from incarcerating young people[5] would be more than enough to achieve the American dream of free public education for all of our people. More jails and truant officers are not needed in the later part of the 20th century -- but more free education is.

4/ See Richard E. Prince, "School Crime $500 Million." The Washington Post (Oct. 1, 1974), p. A1. Security officers suggest that one of the reasons there is so much vandalism is because young people are reacting against places that they are forced to go to against their will.

5/ The State of Maryland spends $18,000 a year to incarcerate each young person in state prisons and group homes. James A. Harris, (paper presented at the South Carolina Education Association Annual Convention, Columbia, South Carolina, April 25, 1974), p. 6.

This proposal would provide free education to all our citizens regardless of age by using the considerable savings as a result of the deletion of compulsory attendance laws. Consequently, we could provide free education for those who, for one reason or another, did not avail themselves of educational opportunities at a young age. These persons would be able to resume their education with dignity which is not presently the case.

Further, there would be more money for compensatory and specialized educational programs which are often prohibitively expensive with the present law. The present law provides that all young people under a certain age be "schooled" whether they or their parents need it, want it, or like it. Nothing could be more destructive to the educational process in a free society than this outmoded law.